

# Trade war in the Pacific: ASEAN and the Trans-Pacific Partnership

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## Disclosure statement

Dr Matthew Rimmer is an Australian Research Council Future Fellow, working on Intellectual Property and Climate Change. He is an associate professor at the ANU College of Law, an associate director of the Australian Centre for Intellectual Property in Agriculture (ACIPA), and a member of the ANU Climate Change Institute. Dr Matthew Rimmer receives funding as an Australian Research Council Future Fellow working on "Intellectual Property and Climate Change: Inventing Clean Technologies" and a chief investigator in an Australian Research Council Discovery Project, "Promoting Plant Innovation in Australia".



A little awkward: Australia has been caught between two trade talks. AAP

Australian politicians are keen to project our participation in two major international trade talks - the Regional Comprehensive Economic Partnership (RCEP), and the Trans-Pacific Partnership (TPP) - as unproblematic.

As Prime Minister Gillard visited Cambodia last week for the East Asia Summit which launched RCEP talks, Trade Minister Dr Craig Emerson, maintained our involvement in both agreements were complementary.

“We now look like we’re going to have two pathways to the one destination: a free trade area of Asia in the Pacific,” he told [the ABC’s Lateline program](#).

However, I would argue that there are fundamental tensions and conflicts between the two agreements - in terms of membership, objectives, principles and text. Rather than being in harmony, the agreements rival each other.

A number of the key nation states are competitors: most notably, [China](#) and the United States. There are tectonic ruptures between trade blocs centred on South-East Asia and a United States-led Pacific Rim. Moreover, it is not clear whether these regional agreements will promote free trade or lock-down protectionism.

There is a need for an open and transparent evaluation of the two regional trade negotiations.

## **The Trans-Pacific Partnership**

[Congressman Dennis Kucinich on the Trans-Pacific Partnership](#). (Watch video)

Originating as [a limited deal between Pacific countries](#), the TPP has evolved into a plurilateral free trade agreement across a score of regulatory fields - including investment, intellectual property, the environment, and healthcare.

Current negotiating countries include the US, Canada, Mexico, Peru, Chile, New Zealand, Australia, Brunei, Singapore, Vietnam and Malaysia. [Japan](#) and [Thailand](#) have also been lobbied to join the discussions.

Negotiations are set to be concluded by October 2013.

But the secretive nature of the treaty-making process has [drawn concern](#) while [politicians in the US](#) and [Australia](#) have lamented the lack of the transparency surrounding the negotiations.

As I have [written previously](#), the investment chapter has divided nations and Australia has been rightly alarmed by measures that attack its plain packaging regime. It will be interesting to see whether Australia holds its ground at the December talks in Auckland.

The intellectual property chapter of the TPP has also been [controversial](#). Maira Sutton of the Electronic Frontier Foundation has [observed](#) the treaty threatens to promote digital censorship and curb internet freedom.

There has been concern the TPP will have an [adverse impact on the environment](#).

A number of influential members of the United States Congress have written a letter arguing the trade agreement needs to provide [strong protection](#) for the environment. Meanwhile, civil society groups such as the Sierra Club are concerned that the agreement will [threaten policies](#) that protect wildlife, preserve scarce natural resources, and promote clean energy and green jobs.

And the TPP has threatened access to essential medicines. As Barack Obama visited Thailand following his re-election, a number of health NGOs and consumer advocacy groups [protested](#) against the TPP, arguing it would force Thais to pay substantially more to purchase the same medicines from foreign countries.

There has also been controversy over whether the United States Trade Representative has been seeking to appease Big Tobacco in the TPP. The [USTR has refused to release the text](#) on tobacco control measures at the forthcoming talks in New Zealand.

There is a need to ensure that the TPP does not undermine the [World Health Organisation Framework Convention on Tobacco Control](#).

## The Regional Comprehensive Economic Partnership (RCEP)

[Prime Minister Julia Gillard discusses the Regional Comprehensive Economic Partnership](#). (Watch video)

At the recent launch of the [Regional Comprehensive Economic Partnership negotiations](#) in Cambodia's capital Phnom Penh, participants released a [declaration on their ambitions](#) for negotiations.

RCEP is an [ASEAN-centred proposal](#) for a regional free trade area, which would include the ten ASEAN member states - Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

The negotiations also include those countries with existing Free Trade Agreements with ASEAN members –including Australia, China, India, Japan, Republic of Korea and New Zealand.

Whereas the TPP has been seen as a strategy to [contain and exclude China](#), RCEP is a trade negotiation which includes China.

The Australian Government has promoted the [Asian Century white paper](#). The RCEP's [Guiding Principles and Objectives](#), has stated the objective of launching RCEP negotiations is to achieve a “modern, comprehensive, high-quality and mutually beneficial economic partnership agreement” among the ASEAN member states and ASEAN's FTA Partners.

In terms of its scope, RCEP will cover “trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, dispute

settlement and other issues.” This range of topics would appear to be more narrow than proposed by the TPP.

In contrast to the TPP, the RCEP is intended to take into consideration “the different levels of development of the participating countries”. The TPP has seemed hostile to the need to respect the [Millennium Development Goals](#) and account for various levels of development.

The RCEP will include an investment chapter and “aim at creating a liberal, facilitative, and competitive investment environment in the region” and also affirms an agenda of strong intellectual property rights protection.

However, there could be divisions between the negotiating nations. India has emphasised the need for [access to intellectual property](#) - particularly as it has been a source of generic medicines and a “pharmacy for the developing world”.

China has been involved in a number of [trade disputes over intellectual property](#). Indonesia has been concerned about benefit-sharing in respect of genetic resources, and [compulsory licencing of drug patents](#).

By contrast, Japan and Singapore have often been intellectual property maximalists in international negotiations over intellectual property. Indeed, Japan supported the much discredited TRIPS-Plus agreement, [the diabolical Anti-Counterfeiting Trade Agreement 2011](#).

There has been discussion as to whether the agreement will include matters of [labour rights and environmental protection](#). Trade Minister Craig Emerson has observed that “Australia will pursue the inclusion of labour and environment issues in the scope of the agreement once negotiations are launched.”

## **World Trade Organisation**

In [a 2012 speech](#), Pascal Lamy, the head of the World Trade Organisation, commented that the rise of regional trade agreements threatened to lead to “policy fragmentation”.

Lamy expressed concern the agreements promoted trade discrimination and protectionism, also noting that such regional agreements sought to deal with a range of non-trade issues.

While Lamy lamented that regional trade agreements threaten to result in policy incoherence and undermine the international framework for trade, he maintained the WTO could play a role in achieving policy coherence within its multilateral framework.

“As an international community, we must continue to fight protectionism, but in the WTO in particular, we must also fight policy fragmentation.”

There is a concern that the energies of member states have been diverted by regional discussions. Arguably, there should be greater diplomatic efforts by nation states in multilateral discussions over trade.

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